

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

STUDENTS FOR FAIR ADMISSIONS, INC.,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (HARVARD CORPORATION),

Defendant.

Civil Action No. 1:14-cv-14176-ADB

Oral Argument Requested

**DEFENDANT’S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendant President and Fellows of Harvard College (Harvard Corporation) (“Harvard”) hereby moves to dismiss this action in its entirety. The grounds for this motion, which are explained in detail in the accompanying Memorandum of Law, include the following:

1. An organization may not bring litigation on behalf of its constituents unless those constituents exhibit “indicia of membership” in the organization. *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 344-45 (1977).

2. The members of Plaintiff Students for Fair Admissions, Inc. (“SFFA”) bear none of the traditional indicia of membership in SFFA. SFFA’s members have never controlled its leadership, have no power to influence its conduct, play no meaningful role in funding it, and do not otherwise participate in its activities.

3. Accordingly, SFFA does not have standing to bring this litigation, and this Court lacks subject matter jurisdiction over SFFA’s claims.

4. In support of this Motion, Harvard submits the accompanying Memorandum of Law and the Declaration of Felicia H. Ellsworth.

WHEREFORE, Harvard respectfully requests that the Court dismiss this action in its entirety.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendant respectfully requests oral argument of this Motion.

Respectfully submitted,

/s/ Seth P. Waxman

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Dated: September 23, 2016

*Counsel for Defendant President and
Fellows of Harvard College*

LOCAL RULE 7.1 CERTIFICATION

Counsel for Harvard hereby certifies that on September 16, 2016, counsel for Harvard conferred by email and phone with Plaintiff's counsel in a good faith attempt to resolve or narrow the issues involved in this motion.

/s/ Seth P. Waxman
Seth P. Waxman

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Seth P. Waxman
Seth P. Waxman